3170.

SUPREME COURT OF THE UNITED STATES.

No. 87.

THE PIQUA BRANCH OF THE STATE BANK OF OHIO, PLAINTIFF IN ERROR,

vs.

JACOB KNOOP, TREASURER OF MIAMI COUNTY.

IN ERROR TO THE SUPREME COURT OF OHIO.

INDEX.

	Original.	Print.
Proceedings in court of common pleas and the district court	1	1
Proceedings in supreme court	7	5
Judgment of supreme court	7	5
Order of court on motion of defendant, and exhibits referred to	8	5
Exhibit A, "an act to tax banks," &c	10	7
Exhibit B, "an act to incorporate the State bank," &c	14	9
Certificate of clerk supreme court	68	37
Assignment of errors	69	38
Writ of error	70	38
Citation and service	72	39

GIDEON, Print.

Supreme court of Ohio, January term, A. D. 1853.

STATE OF OHIO,
City of Columbus.

JACOB KNOOP, Treasurer, &c.
vs.
PIQUA BRANCH STATE BANK OF OHIO.

Petition, &c.—Filed, April 5th, 1852.

To the court of common pleas, of Miami county, Ohio.

Your petitioner, Jacob Knoop, represents that he is now, and for a number of years last past has been, the treasurer of said county, and as such treasurer has been charged with the duty of collecting the taxes, general and special, upon the tax duplicate of said county, assessed and levied upon the various subjects of taxation, under the tax laws of said State. And your petitioner alleges, that upon the tax duplicate for the year A. D. 1851, in the township of Washington, in said county, the Piqua Branch of the State Bank of Ohio, a legally existing banking institution of said State, stands charged with a tax of twelve hundred and sixty-six dollars and sixty-three cents, assessed upon one hundred thousand dollars of the capital stock of said bank, paid in, and $2,111 00, undivided profits. That your petitioner has called upon said bank, for said taxes, and employed all the ordinary means afforded him by law to collect said taxes, and has hitherto found himself utterly unable to collect said taxes, or any part thereof. That the same, with the statutory penalty of five per cent. thereon, still remains due and unpaid. Your petitioner therefore prays that your honor will cause a notice to be served on said Piqua Branch of the State Bank of Ohio, requiring her forthwith to show cause why she should not pay said taxes, &c. And that your petitioner may have such aid in the premises as your honor may be authorized by law to afford.

By CHAS. MORRIS, JR.,
Attorney for petitioner.

THE STATE OF OHIO,
Miami county, ss.

The said Jacob Knoop makes oath, and says, that the facts stated in the above petition are true in substance and in fact.

JACOB KNOOP, JR., Miami C'ty.

Sworn to and subscribed before me, this 30th March, 1852.

C. MORRIS, JR., *Notary public.*

[REC. LXXXVII, D. T., 1853.]—1

Reasons, &c.—Filed April 8th, 1851.

THE PIQUA BRANCH OF THE STATE BANK OF OHIO
ads.
JACOB KNOOP, Treasurer, Miami county, Ohio.

The said defendant now comes and shows cause why the defendant should not pay the taxes and penalty demanded by the applicant of her.

1st. Because she says she is a banking company, lawfully existing, and doing business in Piqua, Miami county, and deriving her power and privileges under the provisions of the act, entitled "An act to incorporate the State Bank of Ohio, and other banking companies, passed February 24th, 1845," and that she was duly organized as such bank in March, 1847, and has continued to exercise the powers and privileges of a banking company to the present time.

2d. Because she did, on the first Monday in May and the first Monday in November, A. D. 1851, set off to the State of Ohio six per centum on the profits, (deducting therefrom the expenses and ascertained losses of the company,) for the six months next preceding the respective days named, and that the cashier did within ten days thereafter inform the auditor of the amount so set off.

3d. Because she further says and distinctly avers, that on the 15th day of November, 1851, she paid on the order of John Woods, auditor of State, to A. A. Bliss, treasurer of State, the sum of eight hundred and sixty-two dollars and fifty cents, being six per centum on her profits, &c., and which said sum of eight hundred and sixty-two dollars and fifty cents, so paid by the bank as aforesaid, and so accepted by the proper authorities of the State of Ohio, is in lieu of all taxes to which said company or the stockholders thereof, otherwise than by the provisions of the act aforesaid, might have been subjected.

4th. Because the taxes assessed against her, and entered upon the duplicate of said county of Miami as taxes against her, are improperly and wrongfully so entered and charged, and are in derogation of her franchises as an incorporated company.

5th. Because the law to tax "banks and bank and other stocks, the same as other property is now taxable by the law of this State," is unconstitutional, null, and void, and because the said assessment and levy of taxes were made under the provisions of this law and no other law.

6th. Because all taxes lawfully chargeable to the said Piqua Branch of the State Bank of Ohio for the year 1851 have been fully paid off, satisfied, and discharged.

JAMES H. HART,
Attorney for the Bank.

Transcript of journal entries.—Filed May 25th, 1852.

THE STATE OF OHIO,
Miami county, ss.

I, B. W. Leavell, clerk of the court of common pleas within and

for the said county and State, hereby certify the accompanying to be the original files and pleadings on file in my office, and the following to be a true transcript of the journal entries, in the following entitled cause, to wit:

March term, A. D. 1852. Monday, April 5th, 1852.

Application for notice.

JACOB KNOOP, treas'r, &c.,
vs.
THE PIQUA BRANCH ST, BK. OHIO.

On motion to the court, by C. Morris, jr., counsel for the pl'ff, it is ordered that a notice be served upon the def't, requiring her to show cause forthwith, why she should not pay the taxes, &c., in said petition mentioned; and thereupon James H. Hart appeared in open court as the att'y of def't, and admitted notice, and, by consent, answer to be filed by Thursday morning next, at nine o'clock.

Thursday, May 6th, 1852.

Pet. for notice, &c.

JACOB KNOOP, treas., &c.,
vs.
THE PIQUA BRANCH OF THE STATE BANK OF OHIO.

The defendant having filed her answer in this cause pursuant to a former order of this court, and this cause coming on to be heard upon the petition of the plaintiff and the answer of the defendant thereto, and the arguments of counsel being heard, and the court being advised in the premises, are of opinion that the defendant, in and by her answer aforesaid, has shown good and sufficient cause why she should not pay the taxes in the petition mentioned and demanded; whereupon the court order that said petition be dismissed and rule discharged at the costs of the petitioner; and thereupon the plaintiff gave notice of his intention to appeal this cause to the district court; whereupon the court direct that said appeal may be perfected by the pl'ffs giving bond in the sum of two hundred dollars, with sureties to the acceptance of the clerk.

In testimony of which I hereunto subscribe my name, and affix the [L. S.] seal of said court at Troy, this 25th day of May, A. D. 1852.

B. W. LEAVELL, *Clerk*,
Pr. R. GIBBS, *Dep. C'k.*

Appeal bond, (filed May 25, 1852.)

Know all men by these presents, that we, Jacob Knoop, treasurer of Miami county, and Jacob Widner, are held and firmly bound unto the Piqua Branch of the State Bank of Ohio, in the penal sum of two

hundred dollars, to the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this 25th day of May, A. D. 1852.

The condition of the above obligation is such, that whereas the said Jacob Knoop, treasurer, &c., has taken an appeal from a certain judgment rendered against him in favor of the said Piqua Branch of the State Bank of Ohio, in the court of common pleas, within and for the county of Miami, in the State of Ohio, at the March term thereof, A. D. 1852, for the sum of one dollar and 9 cents costs, to the district court within and for the county aforesaid, (the costs taxed to the said pl'ff in said cause, being one dollar and seventy-nine cents:) Now, if the said Jacob Knoop, treasurer as aforesaid, shall pay the full amount of the condemnation in said district court, and costs, in case a judgment shall be entered therein in favor of the appellee, then this obligation shall be void; otherwise, in full force and virtue in law.

JACOB KNOOP, *Tr. M. county.* [L. S.]
JACOB WIDNER. [L. S.]

Approved, this 25th day of May, A. D. 1852, by me.
B. W. LEAVELL, *C. M. C. P.*

STATE OF OHIO, *Miami county, ss.*

I, B. W. Leavell, cl'k Miami com. pleas, do hereby certify, that the above is a true copy of the appeal bond filed in the above-named case.

In witness whereof, I do hereby set my hand and affix the seal of said court this 25th day of May, 1852.
[L. S.]
B. W. LEAVELL, *C'k.*

Transcript of journal entry of Miami district court.

THE STATE OF OHIO,
Miami county, ss.

I, B. W. Leavell, clerk of the district court of the State of Ohio, for said county of Miami, hereby certify the accompanying to be the original files and pleadings on file in my office, in the following entitled cause, and the following to be a true transcript of the journal entry, at the May term, A. D. 1852, of said court *court*, in said cause, to wit:

Wednesday, June 2, 1852.

Appeal.

JACOB KNOOP, treas'r, &c.,
vs.
THE PIQUA BRANCH STATE BANK OF OHIO.

The motion to quash the appeal in this case having been overruled by the court, and it appearing that there are important and difficult

questions herein involved, upon which it is desirable to have the decision of the supreme court of the State of Ohio, on motion of C. Morris, jr., esq., attorney for plaintiff, this cause and the several questions therein involved are reserved by the court for decision at the next term of said supreme court.

In testimony whereof I hereunto subscribe my name, and
[L. S.] affix the seal of said district court, at Troy, this 22d day [of] November, A. D. 1852.

B. W. LEAVELL, *Clerk*,
Per R. GIBBS, *Deputy clerk*.

THE STATE OF OHIO,
City of Columbus, ss.

At a supreme court of the State of Ohio, begun and held at the city of Columbus, within and for the State of Ohio, on the third day of January, in the year of our Lord one thousand eight hundred and fifty-three—

Present: the honorable Thomas W. Bartley, chief justice; the honorable William B. Caldwell, the honorable John A. Corwin, the honorable Rufus P. Ranney, judges of said court; Kendall Thomas, clerk; George Riordan, crier.

JACOB KNOOP, Treasurer of Miami county,
vs.
THE PIQUA BRANCH OF THE STATE BANK OF OHIO. } 131.

Appeal reserved in Miami county.

The motion of the defendant to dismiss this cause for want of jurisdiction came on to be heard at this term, and was argued by counsel; and thereupon the court, being fully advised of the premises, overrule the said motion, with costs. And now, the cause coming on to be heard upon the petition of the plaintiff, and the showing of the defendant against the rule therein prayed, was further argued by counsel; on consideration whereof, the court find that the said showing is insufficient, and that a rule absolute ought to be entered against the defendant, as well for payment of the taxes mentioned in the plaintiff's petition, amounting to twelve hundred and sixty-six dollars and sixty-three cents, as for sixty-three dollars and thirty-three cents penalty thereon accrued, and the costs of this proceeding. Whereupon it is considered and adjudged by this court here, that the plaintiff recover of the defendant one thousand three hundred and twenty-nine dollars and ninety-six cents, together with his costs in this behalf expended; and execution is awarded therefor. Ordered, that a special mandate be sent to the court of common pleas, of Miami county, to carry this judgment into execution. Ordered, that a certified copy of this judgment be sent to the district court of Miami county, for entry therein.

And thereupon, on motion of the defendant, it is hereby certified by

the court, and ordered to be made a part of the record herein, that in the above entitled cause the petitioner claimed to collect, and prayed the aid of the court to enforce the payment of, the tax in the petition mentioned, under an act of the general assembly of the State of Ohio, passed March 21st, 1851, entitled "An act to tax banks, and bank and other stocks, the same as other property is now taxable by the laws of this State," a certified copy of which is filed as an exhibit in this cause, marked ("A.") The said defendant, by way of defence to the prayer of said petition, &c., set up an act, entitled "An act to incorporate the State Bank of Ohio, and other banking companies," enacted by the general assembly of the State of Ohio, February 24th, 1845, a certified copy of which is filed as an exhibit in this cause, marked ("B"); under which act the defendants organized, and became and was a branch of the State Bank of Ohio, exercising the franchises of such bank prior to and ever since the year 1847; and that the defendant claimed that, by virtue of the operation of said act last mentioned, the State of Ohio had entered into a binding contract and obligation, whereby the State of Ohio had agreed and bound herself not to impose any tax upon the defendant, and not to require the defendant to pay any tax for the year 1851, other or greater than six per cent. on its dividends or profits, as provided by the 60th section of the said act of February 24th, 1845. And it is further certified, that there was drawn in question in said cause the validity of the said statute of the State of Ohio, passed March 21st, 1851, herein before mentioned, the said defendant claiming that it was a violation of the said alleged agreement and contract between the State of Ohio and the said defendant, and on that account repugnant to the Constitution of the United States and void; but the court here held and decided: 1st. That the sixtieth section of said act of February 24th, 1845, to incorporate the State Bank of Ohio and other banking companies, contains no pledge or contract on the part of the State not to alter or change the mode or amount of taxation therein specified; but the taxing power of the general assembly of the State of Ohio over the property of companies formed under that act is the same as over the property of individuals. And, 2d. That whether the franchises of such companies may be revoked, changed, or modified, or not, the act of March 21st, 1851, upon any construction, does not impair any right secured to them by the act of 1845, and is a constitutional and valid law. And it is further certified, that the decision of the question as to the validity of the said statute of 1851, was necessary to the decision of said cause, and the decision in the premises was in favor of the validity of said statute. The court do further certify, that this court is the highest court of law and equity of the State of Ohio in which a decision of this suit could be held. And it is ordered, that said exhibits A and B be made parts of the complete record in this cause.

Motion to dismiss, (filed January 21, 1853, and mentioned in the foregoing decree.)

JACOB KNOOP, treasurer, &c.,
vs.
PIQUA BRANCH OF STATE BANK OF OHIO. } No. 131.

Reserved from Miami county.

The defendants will move the court to dismiss this case for the want of jurisdiction, for that no appeal lay to the district court from the order made in the common pleas on the 6th May, 1852, dismissing the petition, &c. STANBERY & J. H. HART',
Attorneys for defendants.

Exhibits (A) and (B), filed March 2d, 1853.

Exhibit (A.)

An act to tax banks, and bank and other stocks, the same as other property is now taxable by the laws of this State.

Sec. 1. Be it enacted by the general assembly of the State of Ohio, That it shall be the duty of the president and cashier of each and every banking institution incorporated by the laws of this State, and having the right to issue bills or notes for circulation, at the time for listing personal property, under the laws of this State, to list the capital stock of such banking institution, under oath, at its true value in money, and return the same, with the amount of surplus and contingent fund belonging to such banking institution, to the assessor of the township or ward in which such banking institution is located; and the amount so returned shall be placed on the grand duplicate of the proper county, and upon the city duplicate for city taxes, in cases where such city tax does not go upon the grand duplicate, but is collected by the city officers, and taxed for the same purposes, and to the same extent, that personal property is or may be required to be taxed, in the place where such bank is located; and such tax shall be collected and paid over in the same manner that taxes on other personal property are required by law to be collected and paid over: Provided, however, that the capital stock of any bank shall not be returned or taxed for a less amount than its capital stock paid in.

Sec. 2. Each assessor of any township or ward, within the limits of which any bank or banking company may be located, shall, in case any president or cashier of such bank or banking company shall refuse or neglect to make out and deliver to the assessor the statement herein required, enter as the amount of capital 50 per cent. in addition to the capital stock of said bank or banking company, and shall return the same to the county auditor, or to such other officer as the law regulating his duties may require: Provided, that in cases where city taxes are assessed and collected by the city authorities, the taxes upon banks, as provided for in this act, shall be assessed and collected the same as city taxes upon other property, for the time being, are assessed [and] collected in such city.

Sec. 3. The Ohio Life Insurance and Trust Company shall be taxed upon its capital stock loaned in the several counties, which shall be returned by the president or cashier of the company, under oath, to the several county auditors in the month of May, annually, the average rate per cent. of the taxes for all purposes levied upon the real and personal property of such counties; and if the said company shall fail to return to the auditor of the several counties the amount of its capital stock loaned in each county before the first day of June, annually, the county auditor shall ascertain, from the record of mortgages or other evidence, the amount of the loans made by said company in his county, and he shall place the amount so returned or ascertained upon the duplicate, and levy thereon the average rate or per cent. of the taxes levied for all purposes upon the real and personal property of the county; which tax shall be collected by the county treasurer and distributed, by giving to the State its proportion, according to the rate levied for State purposes, and to the county, townships, towns, corporations, and rural districts, their share of the balance, respectively, in proportion to the several amounts on which the average rates shall have been determined; and in case default shall be made in the payment of such tax within the time limited by law, it shall be the duty of the county treasurer to proceed to collect the same; and, for that purpose, he may file a bill in chancery in the court of common pleas of the proper county, setting forth the amount of taxes assessed against said company, and the names of the debtors of said company, as shown by the records of such county; and it shall be the duty of such court to take jurisdiction thereof, and to grant an injunction, appoint a receiver, and make such other and further order as may be necessary to subject the interest accruing on the loans of said company to the satisfaction of the tax aforesaid, with the penalties and interest thereon, as provided by law. And all the capital stock of said company, not loaned in the several counties of the State, and returned and taxed as aforesaid, shall be listed for taxation, and returned by the president and cashier of said institution, under oath, at its true value in money, and entered, together with the surplus and contingent fund of said company, upon the grand levy for Hamilton county, and taxed for the same purposes, and to the same extent that other personal property is taxed in the ward in which the office of said company is kept.

Sec. 4. It shall be the duty of every assessor, in whose jurisdiction there shall be located any bank or banking company, to leave with some proper officer of said bank or banking company a notice, to make out and deliver the statement required in the first section of this act.

Sec. 5. The taxes levied and collected in pursuance of the provisions of this act shall be in lieu of any taxes which such bank or banking company would, by existing laws, be required to pay on its dividends or profits.

Sec. 6. Stocks or shares held in banks, banking companies, or banking associations, or other incorporated companies or associations in other States, and State stocks of other States, held by corporations or citizens

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of this State, either for themselves or as agents or guardians, shall be subject to taxation the same as bonds, mortgages, notes, or other evidences of debts held by citizens of this State are now taxable by the laws of this State.

Sec. 7. All laws and parts of laws, inconsistent with the provisions of this act, are hereby repealed.

JOHN F. MORSE,
Speaker of the House of Representatives.
CHARLES C. CONVERSE,
Speaker of the Senate.

March 21, 1851.

Exhibit B.

An act to incorporate the State Bank of Ohio, and other banking companies.

Sec. 1. Be it enacted by the General Assembly of the State of Ohio, That it shall be lawful for natural individual persons, not fewer in number in any case than five, to associate and form companies for the purpose of carrying on the business of banking, each at such place in this State as shall be designated in its articles of association, and in the certificate hereinafter required to be made; subject, however, to the contingencies, restrictions, conditions, and liabilities prescribed in this act.

Sec. 2. The aggregate amount of capital stock of all the companies authorized by this act to be formed, and to carry on the business of banking within this State, shall not, until an additional amount shall be authorized by law, exceed six millions one hundred and fifty thousand dollars; which sum shall not, however, be construed to include the capital stock of such companies as by name shall be authorized to continue or resume the business of banking subject to the provisions of this act.

Sec. 3. For the purpose of securing to the several sections of the State a fair participation in the privileges granted by this act, the State shall be divided into twelve districts, and the banking capital authorized by the second section shall be apportioned among such districts, and the number of banking companies to be formed therein shall be limited, as provided in this section, that is to say: The counties of Hamilton, Clermont, Brown, Clinton, Warren, and Butler, shall compose the first district, in which the number of banking companies to be formed shall not exceed five, with an aggregate capital not exceeding one million two hundred thousand dollars.

The counties of Greene, Montgomery, Preble, Miami, Darke, Shelby, Mercer, Allen and Vanwert, shall compose the second district, in which the number of banking companies to be formed shall not exceed five, with an aggregate capital not exceeding six hundred thousand dollars.

The counties of Putnam, Paulding, Williams, Henry, Lucas, Wood,

and Hancock, shall compose the third district, in which the number of banking companies to be formed shall not exceed four, with an aggregate capital not exceeding three hundred thousand dollars.

The counties of Ottowa, Sandusky, Erie, Huron, Richland, Seneca, Wyandott and Crawford, shall compose the fourth district, in which the number of banking companies to be formed shall not exceed four, with an aggregate capital not exceeding four hundred thousand dollars.

The counties of Hardin, Marion, Delaware, Franklin, Union, Logan, Champaign, Clark, and Madison, shall compose the fifth district, in which the number of banking companies to be formed shall not exceed six, with an aggregate capital not exceeding five hundred thousand dollars.

The counties of Pickaway, Fayette, Ross, Highland, Adams, Scioto, Lawrence, Gallia, Pike and Jackson, shall compose the sixth district, in which the number of banking companies to be formed shall not exceed five, with an aggregate capital not exceeding five hundred thousand dollars.

The counties of Meigs, Athens, Washington, Monroe, Morgan, Muskingum, and Guernsey, shall compose the seventh district, in which the number of banking companies to be formed shall not exceed six, with an aggregate capital not exceeding five hundred thousand dollars.

The counties of Hocking, Perry, Fairfield, Licking and Knox, shall compose the eighth district, in which the number of banking companies to be formed shall not exceed four, with an aggregate capital not exceeding four hundred thousand dollars.

The counties of Wayne, Stark, Holmes, Coshocton and Tuscarawas, shall compose the ninth district, in which the number of banking companies to be formed shall not exceed three, with an aggregate capital not exceeding two hundred and fifty thousand dollars.

The counties of Belmont, Harrison, Jefferson, Carroll and Columbiana, shall compose the tenth district, in which the number of banking companies to be formed shall not exceed five, with an aggregate capital not exceeding five hundred thousand dollars.

The counties of Trumbull, Ashtabula, Lake, Geauga and Portage, shall compose the eleventh district, in which the number of banking companies to be formed shall not exceed five, with an aggregate capital not exceeding three hundred thousand dollars.

The counties of Summit, Medina, Lorain and Cuyahoga, shall compose the twelfth district, in which the number of banking companies to be formed shall not exceed eleven, with an aggregate capital not exceeding seven hundred thousand dollars.

Sec. 4. The number of banking companies which shall be formed and permitted to engage in the business of banking, under the provisions of this act, in the county of Hamilton, shall not exceed four; in the county of Cuyahoga, six; in the county of Franklin, three; in the county of Ross, two; in the county of Muskingum, two; in the county of Jefferson, two; in the county of Summit, three; in the county of

Lucas, two; in the county of Miami, two; in the county of Montgomery, two; and in no other county in the State shall there be more than one company formed under the provisions of this act, and permitted to engage in the business of banking, except under the circumstances mentioned and provided for in the twelfth section of this act: Provided, That not more than two companies shall be authorized to commence and carry on the business of banking, as branches of the State Bank of Ohio, under the provisions of this act, in any of the counties named in this section, excepting the county of Hamilton, and in the county of Hamilton not more than three such branches shall be so authorized; and if a greater number of companies formed for the purpose of banking in any such county shall elect to become a branch of the State Bank of Ohio, the commissioners hereinafter appointed shall reduce such number to the number in this section limited, in conformity to the rules prescribed in the eleventh section of this act.

Sec. 5. To carry into effect the provisions of this act, John W. Allen, Joseph Olds, Daniel Kilgore, Alexander Grimes, and Gustavus Swan, shall be and they are hereby appointed commissioners; and they, or a majority of them, after taking an oath diligently, faithfully, and impartially to perform the duties assigned them by this act—a certificate of which oath shall be filed and carefully preserved in the office of the secretary of State—shall constitute a board, to be designated the board of bank commissioners; which board shall continue for one year from the date of this act, and thereafter the duties which they are required by this act to perform shall devolve on and be performed by the auditor, treasurer, and secretary of State, who shall be commissioners to perform such duties; and if any of said commissioners shall refuse to serve, shall die, or resign, his place shall be filled by the general assembly, by joint resolution, if in session, and if not, by the governor.

Sec. 6. Said commissioners shall meet in the city of Columbus, at such time, within thirty days after the passage of this act, as shall be appointed by the governor, who shall notify each member of his appointment, and of the time and place of meeting; they shall, when met, appoint one of their number to be their president, who shall, under the order of the board, sign all official documents; and they shall cause a fair and true record of all their official proceedings to be kept in a book to be provided for that purpose.

Sec. 7. Persons associating to form a banking company shall, under their hands and seals, make a certificate, which shall specify—

First. The name assumed by such company, and by which it shall be known in its dealings, in which name shall be included the name of the city, village, or town, in which its banking operations shall be carried on.

Second. The amount of the capital stock of such company, and the number of shares into which the same is divided.

Third. The name and place of residence, and the number of shares held by each member of the company.

Fourth. The time when such company shall have been formed.

Fifth. That such company has elected to carry on its operations as an independent banking company, or as a "branch of the State Bank of Ohio," as the case may be, which certificate shall be acknowledged before a justice of the peace or notary public, and shall be recorded by the recorder of the county where such company is to be established, in a book to be kept by him for that purpose, which shall, at all times during office hours, be kept open for the inspection of any person wishing to examine the same; one copy of which certificate, duly certified, shall be transmitted to the secretary of State, who shall record and carefully preserve the same in his office, and another to the board of bank commissioners.

Sec. 8. No company shall be permitted to commence or carry on the business of banking, under the authority of this act, as a branch of the State Bank of Ohio, unless its capital stock shall be at least one hundred thousand dollars, nor as an independent banking company, unless its capital shall be at least fifty thousand dollars; nor in either case shall the capital stock of any such company exceed five hundred thousand dollars; provided, however, that the certificates of the funded debt of this State, or of the United States, deposited with the treasurer of State as collateral security for the redemption of the notes of circulation of any independent banking company, shall not be deemed a part of the capital stock of such company within the meaning of this act. At least thirty per cent. of the capital stock of each company shall be paid in gold and silver coin, or their equivalent, one-half of which thirty per cent., at least, shall be in gold and silver coin, and shall be in the actual possession and bona fide the property of the company at the commencement of this banking business, and at the place designated for carrying on such business, and the remainder of the capital stock of such company shall be paid in in instalments, each of at least ten per cent. on the whole amount to which the company is limited, as frequently as one instalment at the end of each succeeding ninety days from the date of the commencement of its banking operations, until the whole amount of capital stock is paid in; but when any banking company, formed under the provisions of this act, shall have paid in at least sixty per centum on the gross amount of its capital stock, and shall deem a further extension of its capital at such time unnecessary, such company may, if a branch of the State Bank of Ohio apply to the board of control, or, if an independent banking company, to the governor, for an extension of the time for paying in the remaining instalments on its capital stock; and if, after a careful examination of the facts, the board of control, or the governor, as the case may be, shall be satisfied that the public convenience does not require an increase of the capital stock of such company as rapidly as required by the foregoing provisions of this section, the board of control, or the governor, as the case may require, shall authorize such further extension of the time for paying in the remaining instalments as shall be deemed compatible with the public interest; and this section shall not be so construed as to prevent any independent banking company that, pre-

vious to commencing its business as a bank, shall have paid on its capital stock not less than thirty thousand dollars, and shall have deposited with and transferred to the treasurer of State certificates of funded debt, as required by this act, to any amount not less than seventy thousand dollars, and shall also have complied with the provisions of this act other than such as relate to the amount of its capital stock, from commencing and carrying on its business as an independent banking company; and, in such case, such company shall not be required to have or pay any additional amount of capital stock.

Sec. 9. If any shareholder or his assignee shall fail to pay any instalment on his stock when the same is required by the foregoing section to be paid, the directors may sell said stock at public auction, having given three weeks' previous notice thereof in a newspaper published in the county where the company is located, to any person who will pay the highest price therefor, and not less than the amount due thereon; and the excess, if any, after paying the expenses of the sale, shall be refunded to the delinquent stockholder. If no bidder can be found who will pay for such stock the amount due thereon to the company, and costs of advertisement and sale, the amount previously paid shall be forfeited to the company; and such stock may be subsequently sold in such manner as the directors may order.

Sec. 10. After the expiration of two months, and within three months from the date of this act, the board of bank commissioners shall examine the certificates of the formation of banking companies, transmitted to them as required by the seventh section of this act, and shall, by one of their own members, or other special agent appointed by them for that purpose, who shall not be a stockholder in any of the companies formed under this act, immediately proceed to examine the condition of each of the banking companies which shall have transmitted to the said board the required certificate, and it shall be the especial duty of such agent to carefully count or otherwise ascertain the amount of money paid in on account of its capital stock, to ascertain the name and place of residence of each of the directors of such company; and the amount of capital stock of which each is the bona fide owner; whether such company has complied with all the requirements of this act necessary to entitle the company to engage in the business of banking; and he shall cause to be made and attested by the oath of the majority of the directors, and by the cashier of such company, a statement of all the material facts necessary to enable the board of commissioners to determine whether such company is lawfully entitled to commence the business of banking, under the provisions of this act, and such agent shall immediately report to the board of bank commissioners such statement and his proceedings in the premises.

Sec. 11. If, upon a careful examination and comparison of the certificates of association, and the reports and statements of the special agents appointed to ascertain whether the banking companies, authorized by this act, have complied with its provisions, it shall appear that any number of companies have been formed and are lawfully

entitled to commence the business of banking, provided the number of such companies, and the amount of their capital, collectively, in any district, shall not exceed the number and the amount of capital assigned to such district, nor in any county the number assigned to such county, the commissioners shall certify the same to the governor, who shall, if he be satisfied that the law has in all respects been complied with, issue his proclamation, setting forth that such companies are authorized to commence and carry on the business of banking at the places severally designated in their certificates of association. But if the commissioners shall find that a number of banking companies shall have been formed, and shall have complied with all the requisitions of this act, preliminary to the commencement of the business of banking, in any district, greater than the number assigned to such district, then the commissioners shall determine which of such companies are to be preferred, and certify the same to the governor, as in this section provided, and, in forming such determination, they shall apply the following rules, in the order in which they stand:

First. They shall avoid depriving any county, in which one or more of such companies are formed, of at least one.

Second. They shall prefer such companies as have the largest capital: Provided, at least thirty per cent. thereof shall have been paid in.

Third. They shall prefer the company or companies whose stock is in the largest proportion owned by the citizens of the county in which such company is formed.

Fourth. They shall prefer the company or companies whose stock is in the largest proportion owned by the citizens of the State.

Fifth. They shall prefer companies constituted by the most responsible stockholders. And in case more companies shall have been formed, and shall have complied with all the requirements of this act, preliminary to the commencement of business, in any county, than the number assigned to such county, the commissioners, in determining to which a preference shall be given, shall observe the foregoing rules, excepting the first, in the order in which they stand. And if, after reducing the number of banking companies in any district to the number assigned to such district, it shall be found that such companies have, collectively, a greater amount of capital than the amount apportioned to such district, then the commissioners shall bring the aggregate capital within the prescribed limits, by reducing the capital which each company shall be authorized to employ in an equal ratio on the amount thereof, over the minimum amount prescribed for such companies.

Sec. 12. After the end of two years from the date of this act, any banking company, formed in any district, may increase its capital stock to any amount not exceeding five hundred thousand dollars, nor exceeding the amount of capital assigned to such district and remaining unappropriated; and in case more than one banking company shall apply for an increase of its capital stock, and the amount of the proposed

increase shall exceed the whole amount of capital unappropriated in such district, then the commissioners shall assign such unappropriated capital equally to the companies demanding the same; bnt any new company, formed in any county having no banking company in the same, shall be preferred at any time before such capital is finally appropriated.

In relation to the State Bank of Ohio.

Sec. 13. Whenever, from an inspection of the certificates transmitted by banking companies to the board of bank commissioners, it shall appear that any number of said companies, not less than seven, inclusive of such existing companies as are by this act especially authorized to resume or continue banking operations under its provisions, have made their election to transact their banking operations as branches of the State Bank of Ohio, and have complied with the requirements of this act, preliminary to the commencement of banking operations, then said commissioners shall immediately notify each of said companies thereof; and within ten days after receiving such notice, they shall each appoint, in such manner as the directors thereof shall prescribe, one person to be a member of the board of control of the State Bank of Ohio; and any two or more of such banking companies may unite in the appointment of the same person. But no person who is not a citizen of the United States, and a resident of this State, and who has not resided within this State at least two years next previous to his appointment, shall be a member of the board of control.

Sec. 14. The members of the board of control, who shall have been appointed agreeably to the provisions of the next preceding section, shall meet in the city of Columbus, at such time as shall be designated by the board of bank commissioners, who shall give ten days previous notice to each branch of the time of such meeting; they shall each take an oath diligently, faithfully, and impartially to perform the duties imposed on them by this act, a certificate of which oath shall be filed and preserved in the office of the secretary of State. They shall organize, provided two-thirds of the whole number*ed* shall be convened, by electing some suitable person as president, whose duty it shall be to preside at the meetings of the board, and sign its official documents. They shall appoint a secretary, who shall keep a fair and true record of the proceedings of the board. They shall keep an office in the city of Columbus, which, together with their books, papers, records, and accounts of every description, shall, at all times, be open to the inspection of any committee of the general assembly, or either branch thereof, and of any commissioner or commissioners especially appointed for that purpose by the general assembly, and of any person appointed by any one of the branches. They shall procure and furnish each branch with notes for circulation, and decide on the amount to be furnished from time to time to each, within the limits, and agreeably to the rules and restrictions prescribed by this act. They may prescribe rules for

the settlement of balances between the branches, three-fourths of the votes given, according to the rule of voting herein prescribed, concurring. They shall have power, by themselves, or by a committee of one or more members of their own board, or by a special agent appointed by them for that purpose, whenever, and as often as they shall think proper, to visit any branch, inspect its books, records, and accounts, and all the evidences of debts due to, and securities held by, such branch; examine and ascertain the amount of money and other property held by such branch; examine, on oath, the president, directors, cashier, and all other officers, agents, clerks, or servants of the branch, touching its condition, means, and liabilities. They shall have power to require any branch to reduce its circulation, or other liabilities, within such limits as they shall, after full inquiry into its condition, deem necessary to secure from loss either the dealers with such branch, or the other branches of the State Bank of Ohio. They may require the officers of each branch to make out, under oath, and transmit to the office of said board, at Columbus, statements of the condition thereof, in such form as such board shall prescribe, and as frequently as they shall deem proper, which statements shall be recorded in a book or books to be kept for that purpose. They may appoint an executive committee of not less than five, of whom the president shall be one, to act in behalf of the board in all such cases, and perform all such duties as shall be prescribed by the by-laws of said board, not inconsistent with this act.

Sec. 15. The president and secretary of the board of control shall each receive such compensation for their services as said board shall allow, which shall be assessed upon the several branches of the State Bank of Ohio, in the ratio of their capital stock. The board may also allow the executive committee such compensation as they shall deem just and reasonable, to be paid by the several branches in the same manner; and the expenses of procuring plates and printing notes of circulation shall be paid by the several branches, in the ratio of the notes of circulation received by each.

Sec. 16. The board of control, from the time of its organization until the first day of May, in the year one thousand eight hundred and sixty-six, and thereafter, until the affairs of the several branches of the State Bank of Ohio shall be finally closed up, shall be a body corporate, with succession, and by the name of the State Bank of Ohio, capable of contracting and of prosecuting, and defending in suits or actions at law, or in chancery, as fully as natural persons, and of doing all other acts and things necessary to effect the object contemplated in this act by the formation of said board.

Sec. 17. Each member of the board of control shall continue in office until the first Monday of February next after his appointment, and until his successor shall be appointed and qualified; vacancies in the board shall be filled by the branch by which the appointment vacated was made. In voting, each member shall be entitled to one vote, and to one additional vote for every fifty thousand dollars of the

amount of notes of circulation, to which the branch or branches represented by him is or are entitled at the time of such voting. The president of the board shall hold his office one year, and until his successor shall be appointed, but may be removed by a resolution of the board. He shall take an oath faithfully, diligently, and impartially, to fulfil the duties of his appointment; and not knowingly violate any of the provisions of this act. He may be required to give bond in such sum, and with such securities, as the board shall prescribe; and all vacancies in said appointment shall be filled by the board.

Sec. 18. All notes issued by any branch, intended to circulate as money, shall be payable at the branch by which they are issued, in gold and silver coin, the lawful currency of the United States, or either, at the option of the branch, on demand; they shall be signed by the president of the board of control, countersigned by the cashier of the branch by which they are issued, made payable to bearer, and shall be negotiable by delivery; all other evidences of debt, issued by any branch, shall be negotiable or transferable in the same manner as if issued by a natural person, and shall be binding on the branch, whether under seal or not; and all such evidences of debt, other than notes of circulation, shall be payable to the order of some person therein named.

Sec. 19. No branch of the State Bank of Ohio shall, at any time, have in circulation notes in the similitude of bank notes, to an amount bearing a greater portion to the capital stock of said branch actually paid in, and at the time remaining undiminished by losses or withdrawal, exclusive of its portion of the safety fund, than the proportion hereinafter specified, that is to say: On the first hundred thousand dollars, or any lesser amount of its capital, not more than twice the amount of such capital. On the second hundred thousand dollars, or part thereof, not more than once and a half of the amount of such capital, over one hundred thousand. On the third hundred thousand dollars, or part thereof, not more than once and a quarter the amount of such capital, over two hundred thousand. On the fourth hundred thousand dollars, or part thereof, not more than once the amount of such capital, over three hundred thousand; and on any amount of capital over four hundred thousand dollars, not more than three-fourths the amount of such capital, over four hundred thousand, and on its portion of the safety fund an amount equal thereto.

Sec. 20. Notes designed for circulation shall be delivered by the board of control to each branch, on a written order, signed by the president and a majority of the directors of such branch; such orders shall be carefully preserved by said board in their office; an accurate account of all the notes so delivered, the amount of the notes of each denomination so delivered, and the date of such delivery, shall be kept by the board of control, in a book or books to be provided and kept in their office at Columbus; all notes so worn, defaced, or mutilated, as to be unfit for circulation, shall be returned by the branch

by which they were issued to the board of control, and an equal amount of new notes received therefor; all such notes so returned by a branch shall be credited, and all new ones delivered in their stead shall be charged to such branch on the books of said board; and the notes so returned shall be burned to ashes in the presence of the president and at least two of the members of said board.

Sec. 21. Before the board of control shall deliver to any branch notes for circulation, they shall require such branch to pay over or deposit to the credit of said board, as said board shall order, either in money or in certificates of the stocks of this State, or of the United States, at their current value in the city of New York, but in no instance above their par value, an amount equal to ten per cent. on the amount of the notes for circulation, which shall be delivered to such branch. And so from time to time, as any branch may, by the paying in of an additional amount on its capital stock, or by not having received the amount of notes for circulation to which it was previously entitled, be authorized to demand an additional amount of notes for circulation, such branch shall deposit with the board of control ten per cent. on the amount of notes so required, and the stocks and moneys so deposited shall be denominated the "safety fund," and shall be invested as hereinafter prescribed, and held by the board of control as the property of said board, in trust for the benefit of the several branches of the State Bank of Ohio, and as a fund for the redemption of the notes of circulation of any one or more of said branches that may fail to redeem its notes, to be applied to that purpose in the manner pointed out by this act.

Sec. 22. All money so deposited or paid to the board of control on account of the safety fund, by any branch, shall be, under the direction of said board, invested by such branch either in the stocks of the State or of the United States, or in bonds secured by mortgages on unincumbered real estate situate in the county where such branch is located, or in adjoining counties, of at least twice the value in each case of the amount secured thereby, exclusive of buildings or other fixtures subject to be destroyed by fire, by floods, or accidental occurrences, or of timber, mines, or minerals subject to waste; which bond shall be made payable on demand to the State Bank of Ohio, and shall bear such rate of interest as shall be agreed on by the parties, not exceeding seven per cent. per annum, payable semi-annually. Each branch shall be entitled to receive the interest accruing on the stocks or bonds in which its portion of the safety fund shall have been invested; and in case of the insolvency of any branch, the stocks and bonds in which the money of such branch shall have been invested as aforesaid, if the proceeds of such stock and bonds shall be sufficient to redeem its outstanding notes of circulation, shall, as far as practicable, be first converted into money and applied to that purpose before any part of the safety fund, belonging to other branches, shall be so applied.

Sec. 23. The stockholders, collectively, of any branch shall at no

time be liable to such branch, either as principal debtors or sureties, or both, to an amount not exceeding one third part of the capital stock of such branch, then actually paid in and remaining as capital stock; nor shall the directors, collectively, be so liable to an amount exceeding one fourth part of the capital stock actually paid in, standing in their names, and of which they are, collectively, the bona fide owners in their own right: Provided, that such directors may be further permitted to become liable, as drawers or endorsers of bona fide foreign bills of exchange, drawn in this State, and payable at any place out of this State, to an amount, when added to their other liabilities, not exceeding one-third of the capital stock actually paid in, and standing in the names of such directors; and the stockholders may become liable in like manner, in such sum as, when added to their other liabilities, will not exceed one-half of the capital stock of any such branch actually paid in.

Sec. 24. If any branch of the State Bank of Ohio shall refuse to pay its notes of circulation, or any of them, in gold or silver coin of the lawful currency of the United States, on which payment shall be lawfully demanded at its banking-house or customary place of doing banking business, during usual banking hours, such branch shall be deemed to have committed an act of insolvency, and thereupon all its property, credits, securities, liens, and assets, of every description, shall forthwith vest in and be the property, credits, securities, liens, and assets of the board of control, for the uses and purposes declared in this act.

Sec. 25. The board of control, on receiving information that any branch of the State Bank of Ohio has committed an act of insolvency, shall forthwith appoint a committee of one or more of its members, who shall make immediate inquiry into the truth of such information, and report thereon to the board; and if the board shall be satisfied from the report of the committee that such branch has suspended the payment of its notes in gold and silver, they shall forthwith appoint a suitable receiver or receivers, who shall take immediate possession of the books, records, money, choses in action, and property of said branch of every description, and hold the same for the joint use and benefit of the other branches of the State Bank of Ohio and the creditors of the said failing branch; and said board of control shall immediately provide money and place the same in such solvent branch or branches as may be most convenient for the purpose of redeeming the notes of such failing branch, and shall give public notice thereof in some newspaper printed in the place where such failing branch is located, and also in some newspaper of general circulation published at Columbus.

Sec. 26. Each solvent branch shall contribute, in the ratio of the circulation to which it is entitled, to the sum necessary for redeeming the notes of the failing branch, as provided in the preceding section, on the requisition of the board of control, and may be remunerated for such contribution from the safety fund, as soon as money sufficient

can be raised from that fund by a sale or hypothecation of the stock, funds, or other securities belonging thereto.

Sec. 27. The receiver or receivers, appointed as provided in the twenty-fifth section, shall be required to give bond in such sum and with such securities as the board of control shall judge sufficient, and, under the direction of the said board, shall proceed to settle up its affairs, and convert its assets into money. The money so made shall be applied—

First. To reimburse all moneys which shall have been advanced by the several branches for the redemption of the notes and bills of the insolvent branch, and which may not have been previously reimbursed from the safety fund.

Second. To reimburse all moneys advanced from the safety fund, other than moneys derived from that portion of the safety fund furnished by the failing branch.

Third. To the payment and discharge of all the remaining liabilities of such branch; and

Fourth. The residue shall be divided among the stockholders of the failing branch, in proportion to the stock by them respectively held.

Sec. 28. If any branch, against which the board of control shall have instituted proceedings on account of any supposed act of insolvency, as prescribed by the 25th section of this act, shall deny having committed such act of insolvency, such company may apply to any court of competent jurisdiction for a writ of injunction to said board of control to suspend all further proceedings against such branch as an insolvent company; and such court, after citing said board of control to appear and show cause why such writ should not be granted, and, after the finding of a jury that such branch has at all times continued, and still continues, to redeem in gold and silver coin its notes of circulatian, shall make an order enjoining the board of control from all further proceedings against such branch, on account of the supposed act of insolvency on which such proceedings were instituted, and thereupon all the property and assets of such branch shall be restored to its directors.

Sec. 29. If the board of control shall in any case fail to proceed in the manner prescribed in the foregoing sections of this act, in providing for the payment of the outstanding notes of circulation, and in closing the affairs of any branch that shall have committed an act of insolvency, the holder of any of its notes of circulation or other creditor of such branch may, in case payment of such notes of circulation or other claim has been refused when lawfully demanded, and remains unpaid, apply to any court of competent jurisdiction for its writ, commanding the board of control so to proceed; and it shall be the duty of such court, after citing such board to appear and show cause why such writ should not issue, and, upon the finding of a jury that such act of insolvency has been committed, to issue their writ, commanding said board of control forthwith to proceed in the manner pointed out in the preceding sections of this act, to provide for the payment of the out-

standing notes of such branch, close up its affairs, and make application of its assets.

In relation to independent banking companies.

Sec. 30. Each company that shall have elected to carry on its business as an independent banking company, and shall have complied with the requirements of this act, preliminary to the commencement of banking business, shall, before it shall commence such business, and before it shall be held to have acquired corporate powers, deposit with and transfer to the treasurer of State certificates of the funded debt of this State, or of the United States, at least equal in amount to the amount of its capital stock at such time paid in; and from time to time, as an additional instalment or portion of its capital stock shall be paid in, additional certificates of the funded debt above specified, at least equal in amount to the amount of such additional payments of capital stock, shall, within thirty days after such payment, be deposited with and transferred to the treasurer of State; but no such certificate of funded debt shall be received by said treasurer at a rate or price above the average selling price of such certificates at the New York stock exchange for the four weeks next preceding the time of the receipt thereof by the treasurer; nor shall any certificate of the funded debt of this State be received at any rate above its par value, exclusive of the unpaid interest that may have accrued thereon; and if such company shall fail to make deposits and transfers of stock, as in this section required, all its franchises and powers derived from this act, except such as may be necessary to settle up its affairs, shall immediately cease and determine.

Sec. 31. The treasurer of State shall deliver, from time to time, as he may be prepared so to do, to any independent banking company that may have entitled itself thereto, on the written order of the president and a majority of its directors, notes for circulation, to any amount not exceeding the value of the certificates of funded debt deposited with and transferred to him by such company, as prescribed by the preceding section; but at no time shall the total amount of such notes delivered to any such company exceed three times the amount at such time actually paid in on its capital stock, and remaining as capital stock, undiminished by losses or otherwise.

Sec. 32. In order to furnish suitable notes for circulation to such independent banking companies, the treasurer of State is hereby authorized and required to cause to be engraved and printed, in the best manner to guard against counterfeiting, such quantity of circulating notes, in the similitude of bank notes, in blank, of the several denominations provided for in this act, as he may, from time to time, deem necessary to furnish to such independent banking companies, according to the provisions hereinafter set forth; which notes shall be countersigned, numbered, and registered in proper books, to be provided and kept for that purpose in the office of said treasurer, under his direction, by such person or persons as he may appoint, so that each

denomination of such circulating notes shall bear the uniform signature of one of such registers; and all the notes of each separate denomination shall bear the same device, and bear a general similitude; and the notes or bills to be so countersigned shall have stamped or printed on their face the words "secured by the pledge of stock."

Sec. 33. The plates, dies, and materials to be procured by the treasurer of State for the printing and making the circulating notes provided for in the thirty-second section of this act, shall remain in the custody of said treasurer, and under his direction; and the expense necessarily incurred by him in executing the provisions of this act shall be audited and settled by the auditor of State, and paid out of any moneys in the treasury not otherwise appropriated; and for the purpose of reimbursing the same to the treasury, the said treasurer is hereby authorized and required to charge against and receive from each company receiving such circulating notes such rate per centum thereon as may be sufficient for that purpose; and shall, from time to time, equalize said expenses among the companies to whom such circulating notes may be furnished.

Sec. 34. After any such independent banking company shall have caused to be executed and signed by the president and cashier thereof the circulating notes received from the treasurer of State, in such manner as may be requisite to make them obligatory notes, payable on demand at its place of business, such company is hereby authorized to issue and circulate the same as money.

Sec. 35. It shall be the duty of the treasurer of State to receive mutilated circulating notes issued by him to any of such independent banking companies, and to deliver, in place thereof, other circulating notes to an equal amount; and the said mutilated notes, after a memorandum shall have been entered in the proper book or books, shall be burned to ashes by the said treasurer, in the presence of the secretary of State and the officer or agent of said company by whom the said notes shall have been delivered to the said treasurer; and a certificate of said burning, signed by said treasurer, shall be made in the books of the register, and a duplicate thereof given to said agent.

Sec. 36. The treasurer of State shall give to any company by whom any stock shall have been deposited, according to the provisions of the thirtieth section of this act, powers of attorney to receive the interest or dividends thereon, which interest or dividend such company may receive and apply to its own use; but such powers of attorney shall become void upon any such company failing to redeem the circulating notes issued by such company: Provided, however, That whenever the price of any of the stocks pledged for the security or redemption of the circulating notes issued by any such company as aforesaid shall be, at the stock exchange in the city of New York, for four consecutive weeks, at a price or rate less than the value at which such stock shall have been estimated when so deposited and pledged, the treasurer shall receive and retain the interest or dividend on such depreciated stock so pledged, until the interest so received, when added to the

market value of stocks so pledged, to be ascertained as in this section before provided, will be equal in amount to the amount for which such stocks were pledged; and he shall deposit the amount so received with any solvent banking company in this State, at such rate of interest as shall be agreed upon, or, at the option of the company by which such stocks were deposited, invest such interest or dividends in any of the stocks by this act authorized to be pledged, in the name of the treasurer of State, in trust for the banking company by whom the stocks on which such interest or dividends may have accrued shall have been pledged; and whenever the price of such depreciated stocks, at the New York stock exchange, shall rise to the price at which they were pledged by the company, and so remain for four consecutive weeks, such investment shall be assigned to such company, and all accruing interest on such pledged stock shall thereafter be paid to such company.

Sec. 37. The stocks transferred to the treasurer of State by an independent banking company, for the security of its circulating notes, shall be held by him exclusively for that purpose until such notes shall be redeemed, except as hereinafter provided.

Sec. 38. If any such independent banking company shall fail to redeem, in gold or silver coin, any of its circulating notes issued in pursuance of the provisions of this act, when payment thereof shall be lawfully demanded, during the usual hours of business, at the office of such company, the holder of such note or notes may cause one or more thereof to be protested by a notary public, who shall, on protesting the same, forthwith forward notice of such protest to the treasurer of State; and, after such protest suffered, it shall not be lawful for the company thus suffering protest to pay out any of its notes, discount any notes or bills, or otherwise engage in the business of banking, except to receive and safely keep moneys belonging to it, and to deliver special deposits: Provided, however, That if satisfactory proof be produced to such notary public that the payment of any such note or notes is restrained or delayed by order of any court of competent jurisdiction, such notary public shall not protest the same. Where the holder of such notes shall cause more than one to be protested on the same day, he shall not receive pay for more than one such protest.

Sec. 39. In case any such independent banking company shall fail to pay and redeem its circulating notes on demand, in gold or silver coin, as specified in the next preceding section of this act, the treasurer of State shall, within thirty days after he shall have received notice of such failure, cause the stocks pledged by such company, or so much thereof as may be necessary to redeem the outstanding circulating notes of such company, to be sold either at the stock exchange in the city of New York—after giving notice of such sale to such company, and also advertising the time and place of sale, with a pertinent description of the stocks to be offered for sale, in two or more newspapers published in the city of New York, for not less than ten consecutive days before the day of sale—or at the State treasury in the city of Columbus, giving notice to

said company, and also advertising in one or more newspapers published in the city of Columbus, and one or more newspapers in general circulation in the county where the office of such failing company is situated, which advertisements shall contain the same particulars as are required herein where sales are to be made in the city of New York; and out of the proceeds of such sale the treasurer shall pay in a ratable proportion the circulating notes of such company, of which due notice shall be given, calling upon the holders of such notes to present them for such payment at the State treasury: Provided, That if any of the circulating notes of such failing company shall not be presented for redemption at the State treasury until after the term of two years from the date of the first publication of the notice to the holders of such notes to present the same at the State treasury, the treasurer may pay ratably to the holders of the notes previously presented, if such notes shall not have been previously paid in full, whatever of the proceeds of such sale remaining in his hands may be needed to fully discharge such notes so presented.

Sec. 40. The treasurer of State may, if he shall deem that the interests of the note-holders of any insolvent banking company will be best promoted thereby, with the advice of the auditor and secretary of State, hypothecate or sell, at private sale, any of the stocks transferred to and deposited with him by such company, to any other independent banking company, or to any individual person or firm, and receive therefor either money or the circulating notes of such failing company: Provided, That no such stock shall be sold by private sale at less than the par value thereof, nor at less than its selling price at the New York stock exchange at the date of the last received information; nor shall any such stock be sold on credit.

Sec. 41. On receiving notice that any such independent banking company shall have committed an act of insolvency, as herein before defined, the treasurer of State, the secretary of State, and the auditor of State, or a majority of them, shall appoint a special agent, who shall immediately proceed to ascertain whether such company has refused to pay its notes in gold and silver coin when lawfully demanded, and report to the said treasurer, secretary and auditor, the facts so ascertained; and if, from the report so made, said treasurer, secretary, and auditor, or a majority of them, shall be satisfied that such company has suspended the payment of its circulating notes, when lawfully demanded, in gold and silver coin, they shall forthwith appoint a receiver or receivers, and require of him or them such bond and security as they shall deem proper, who shall proceed to take possession of the books, records, and assets of every description of such company; collect all debts, dues, and other claims belonging to such company; settle, and, with the approbation of an agent to be appointed by the stockholders for the protection of their interests, compound for all bad and doubtful debts; sell all the real and personal property of said company, and to pay over all moneys so made to the treasurer of State; and the treasurer of State shall cause notice to be given by advertisement in one or

more newspapers published in the city of Columbus, and also in one or more newspapers in general circulation in the county where the office of such insolvent company shall be situated, for six consecutive months, calling on all persons who may have claims against such company to make legal proof thereof; and after the end of one year from the first publication of such notice, the treasurer, after full provision shall have been made for redeeming the circulating notes of such company, shall make a ratable dividend of the moneys so paid over to him by such receiver or receivers, inclusive of moneys received by him on sales of stock transferred to and deposited with him by such company on all such claims as may have been so proved; and from time to time, as the proceeds of the assets of said company shall be paid over to him, the said treasurer shall make further dividends, as aforesaid, on all claims previously proved, and the remainder, if anything, shall be paid over to the stockholders of the company, or their legal representatives, in proportion to the stock by them severally held: Provided, however, That if any independent banking company, against which proceedings have been instituted as prescribed in this section, on account of any supposed act of insolvency, shall deny having committed such act, such company may apply to any court of competent jurisdiction to enjoin further proceedings in the premises; and such court, after citing the treasurer, secretary, and auditor of State, to show cause why further proceedings should not be enjoined, and after the finding of a jury that such company has not suspended the payment of its notes, when legally presented, in gold and silver coin, shall make an order enjoining said treasurer, auditor, and secretary of State, and any receiver or receivers appointed by them, from all further proceedings on account of such supposed act of insolvency.

Sec. 42. If the original capital stock of any of such independent banking companies shall in any manner be diminished, or any portion thereof be withdrawn for any purpose whatever, while any debts or demands against such company remain unsatisfied, no dividends shall thereafter be made on the shares of the capital stock of such company, until the original amount of the capital stock shall be restored, either by contribution of the shareholders, or out of the profits of the business of such company; and in case any dividend shall be made, while the capital stock shall remain so diminished or withdrawn, it shall be the duty of any court, having competent jurisdiction, to issue the necessary orders and decrees for closing the affairs of such company, and dividing its effects among its creditors and shareholders, as in this act provided.

Sec. 43. All fees for protesting the notes issued by any such independent banking company shall be paid by the person procuring the protest to be made, and such company shall be liable therefor; but no part of the stocks pledged by said company to the treasurer shall be applied to the payment of such fees; and all expenses incurred in conducting the sale of any such pledged stocks, and advertisements thereof, shall be paid out of the proceeds of such sales.

Sec. 44. The stockholders, collectively, of any independent banking company, shall at no time be liable to such company, either as principal debtors or sureties, or both, to an amount greater than three-fifths of the amount of capital stock actually paid in and remaining undiminished by losses or otherwise, nor shall the directors be so liable, except to such amount, and in such manner as shall be prescribed by the by-laws of such company, adopted by its stockholders to regulate such liabilities; and it shall be the duty of the auditor, treasurer, and secretary of State, or a majority of them, as often as once in each year, to appoint some suitable person in the vicinity of each independent banking company, who shall not be a stockholder in any bank of this State, who shall have power to make a thorough examination into all the affairs of the bank which he may be appointed to examine, and, in so doing, to examine any of the officers and agents of such bank, on oath, and such agent shall make a detailed report of the condition of such bank to the auditor of State; and the banking companies, deriving their powers and privileges from this act, shall not be subject to any other visitorial powers than such as are authorized by this act, except such as are vested in the several courts of law and chancery; and every agent, appointed as in this section provided, shall receive for his services at the rate of two dollars for each day by him employed in such examination, and two dollars for every twenty-five miles he shall necessarily travel in the performance of his duty, which shall be paid by the banking company by him examined.

Sec. 45. Whenever any independent banking company, being desirous of diminishing the amount of its circulating notes, shall deliver to the treasurer of State any portion of such notes, not less in amount, at any one time, than five thousand dollars, to be destroyed, the treasurer shall destroy the same as prescribed in section thirty-five, and shall thereupon re-transfer and deliver to such company certificates of funded debt, deposited with him by such company, to an amount equal to the amount of notes so delivered up: Provided, that the amount of such certificates, remaining with the treasurer, shall not thereby be reduced below the amount of the capital stock of such company at that time paid in, nor in any case below the sum of fifty thousand dollars, nor in value, estimating the same at their then current price in the city of New York, below the amount of circulating notes still retained by such company, nor shall the treasurer be required to retransfer such certificates in fractional sums of less than one thousand dollars; and whenever any such company, being desirous of relinquishing its banking business, shall have paid at least ninety per cent. of the maximum amount of its circulating notes, and shall have delivered the same to the treasurer of State to be destroyed, shall have provided means and given security to the satisfaction of the treasurer, secretary, and auditor of State, for the redemption of its outstanding notes of circulation, at the place where the office of such company was established, and shall have given notice thereof by advertisement, for

six consecutive months, in two newspapers of general circulation published at Columbus, and at least one published in the city, town, or village where the office of such company is located, it shall be lawful for the treasurer of State to transfer and deliver to such company all the certificates of funded debt previously pledged with him by such company, and thereupon all the corporate powers of such company, except such as shall be necessary to close up affairs, shall cease.

General provisions.

Sec. 46. The capital stock of each banking company shall be divided into shares of one hundred dollars each, and shall be assignable on the books of the company in such manner as its by-laws shall prescribe, but no shareholder shall have power to sell or transfer any shares held in his own right so long as he shall be liable, either as principal debtor, surety, or otherwise to the company, for any debt which shall have become due and remains unpaid, nor in such case shall such shareholder be entitled to receive any dividend, interest, or profit on such shares, so long as such liabilities shall continue, but all such dividends, interests, or profits, shall be retained by the company, and applied to the discharge of such liabilities, and no stocks shall be transferred without the consent of a majority of the directors, while the holder thereof is indebted to the company.

Sec. 47. No banking company shall take, as security for any loan or discount, a lien upon any part of its capital stock, but the same security, both in kind and amount, shall be required of shareholders as of persons not shareholders; and no banking company shall be the holder or purchaser of any portion of its capital stock, or of the capital stock of any other incorporated company, unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, on security which at the time was deemed adequate to insure the payment of such debt, independent of any lien upon such stock, or in case of forfeitures of stock for the non-payment of instalments due thereon, as provided in the ninth section; and stock so purchased shall in no case be held by the company so purchasing for a longer period of time than six months, in the same can be sold for what the stock cost, or at par.

Sec. 48. In all elections of directors, and in deciding all questions at meetings of the stockholders, each share shall entitle the owner thereof to one vote; stockholders may vote by proxies, duly authorized in writing, but no officer, clerk, teller, or book-keeper of the company shall act as proxy, and no stockholder whose liability to the company is past due and unpaid shall be allowed to vote.

Sec. 49. The affairs of every company formed and organized to carry on the business of banking under the provisions of this act shall be managed by not less than five nor more than nine directors. Every director shall, during his whole term of service, be a citizen of the United States, and a resident of this State. At least three-fourths of

the directors shall have resided in this State two years next previous to their election as directors; each director shall own, in his own name and right, at least one per cent. of the capital stock of the company, up to two hundred thousand dollars, and the half of one per cent. on its capital stock over two hundred thousand dollars. The directors of each banking company, collectively, shall own at least one-tenth of its capital stock. Each director shall take an oath that he will, so far as the duty devolves on him, diligently and honestly administer the affairs of the company, and not knowingly violate, or willingly permit to be violated, any of the provisions of this act; that he is the bona fide owner, in his own right, of the stock standing in his name on the books of the company, and that the same is not hypothecated, or in any way pledged as security, for any loan obtained or debt owing; which oath, subscribed by himself, and certified by the magistrate before whom it is taken, shall be filed and carefully preserved in the office of the recorder of the county in which the banking company is located.

Sec. 50. The directors of any banking company first elected shall hold their places until the first Monday in January next thereafter, and until their successors shall be elected and qualified; all subsequent elections shall be held annually on the first Monday of January, and the directors, so elected, shall hold their places for one year, and until their successors are elected and qualified; but any director removing from the State, or ceasing to be the owner of the requisite amount of stock, shall thereby vacate his place. Any vacancy in the board shall be filled by appointment by the remaining directors; the director so appointed shall hold his place until the next annual election; and if, from any cause, an election of directors shall not be made at the time appointed, the company shall not, for that cause, be dissolved, but an election may be held on any subsequent day, thirty days' notice thereof having been given in a newspaper printed in the county where the company is located.

Sec. 51. Every banking company authorized to carry on the business of banking under the provisions of this act, whether as a branch of the State Bank of Ohio, or as an independent banking company, shall be held and adjudged to be a body corporate, with succession until the first day of May, in the year one thousand eight hundred and sixty-six, and thereafter until its affairs shall be closed; and by its corporate name shall be competent to contract, prosecute, and defend suits and actions of every description, as fully as natural persons, and process against such company may be served upon its president or cashier, or by leaving a copy thereof at its usual place of business during the usual business hours. Each of said banking companies shall, until the first day of May, in the year one thousand eight hundred and sixty-six, if so long it shall comply with the provisions of this act, have power to loan money, buy, sell, and discount bills of exchange, notes, and all other written evidences of debt, except such as it shall be prohibited by this act from buying, selling, or discounting; receive deposits; buy and sell gold and silver coin and bullion; collect and pay

over money, and transact all other business properly appertaining to banking, subject, however, to the provisions and restrictions contained in this act; may acquire, hold, and convey such real estate as may be necessary to the convenient transaction of its business, and no more, but may, however, acquire title to any real estate pledged to secure any debt previously contracted or purchased on an execution or order of sale, to satisfy any judgment or decree in its favor, or which shall have been conveyed to it in payment of any previous debt, but shall not hold any real estate so acquired longer than is necessary to avoid a loss of any part of the debt, interests, and costs, for the collection or security of which it was acquired; but at any time before selling the same, upon being tendered by the last preceding owner, or his legal representatives, such sum as shall be necessary to save such company from loss of any part of the debt, interest, taxes, costs, and other necessary charges for the collection or security of which such real estate was acquired, such company shall release to such owner, his legal representatives or assigns, all its right, title, and interest therein.

Sec. 52. Notes of one dollar, two dollars, three dollars, five dollars, ten dollars, twenty dollars, fifty dollars, and one hundred dollars each, and no note of any other denomination, may be issued by any banking company deriving any of its powers or privileges from this act. Of the notes issued by any such banking company, not more than ten per cent. of the amount shall be in notes of one dollar each; not more than five per cent. in notes of two dollars each; not more than ten per cent. in notes of three dollars each; not more than twenty per cent. shall be in notes of all denominations under five dollars; not more than fifty per cent. in notes of all denominations under ten dollars.

Sec. 53. No banking company deriving any of its powers or privileges under this act shall at any time issue or have in circulation any note, draft, bill of exchange, acceptance, certificate of deposit, or other evidence of debt which, from its character or appearance, shall be calculated or intended to circulate as money, other than such notes of circulation as are by this act described, and which such companies are expressly authorized to issue for the purpose of being circulated as money.

Sec. 54. Each independent banking company shall receive at par, at the office or banking-house of such company, in payment of debts due for notes of hand, bills of exchange, or other evidences of debt discounted or purchased by or belonging to such company, the notes of circulation issued by any other independent banking company authorized to issue such notes by this act which shall, at the time, redeem its notes in gold and silver coin; and every branch bank of the State Bank of Ohio shall receive at par, at the office or banking-house of such company, in payment of debts due for notes of hand, bills of exchange, or other evidences of debt discounted or purchased by or belonging to such branch bank, the notes of circulation issued by any other branch of the State Bank of Ohio.

Sec. 55. Each banking company shall at all times have on hand,

in gold and silver coin, or their equivalent, one-half at least of which shall be in gold and silver coin in its vault, an amount equal to at least thirty per cent. of the amount of its outstanding notes of circulation; and whenever the amount of its outstanding notes of circulation shall exceed the above-named proportion for the space of twelve days, or whenever the said gold and silver coin, or their equivalent, shall at any time fall below the amount of twenty per cent. of its circulation, no more of its notes shall be paid out, or otherwise put in circulation by such banking company, nor shall such company increase its liabilities by making any new loans or discounts, other than discounting or purchasing bills of exchange, payable at sight, nor make any dividend of its profits, until the required proportion between its outstanding notes of circulation and gold and silver coin, or their equivalent on hand, shall be restored. Actual deposits with any solvent bank or banker, of established credit in the cities of New York, Boston, Philadelphia, or Baltimore, subject to be drawn against at sight, payable in gold and silver coin, shall be deemed equivalent to gold and silver coin, wherever these terms are used in this act.

Sec. 56. No banking company, deriving any of its powers or privileges from this act, shall at any time be indebted, or in any way liable to an amount exceeding, if a branch of the State Bank of Ohio, two-thirds, or if an independent banking company the whole amount of its capital stock at such time actually paid in and remaining as capital stock, undiminished by losses or otherwise, except on the following accounts, that is to say:

First. On account of its notes of circulation.

Second. On account of moneys deposited with or collected by such company.

Third. On account of bills of exchange or drafts drawn against money actually in deposit to the credit of or due such company.

Fourth. Liabilities to its stockholders on account of money paid in, on capital stock, and dividends thereon.

Sec. 57. No banking company shall, either directly or indirectly, pledge, hypothecate, or exchange any of its notes of circulation, for the purpose of procuring money to be paid in on its capital stock, or to be used in its ordinary banking operations, or for the purpose of purchasing certificates of State stock to be deposited with the treasurer of State, or with the board of control; nor shall any banking company apply, or permit to be applied, hypothecated, or pledged, any portion of its capital stock to the purchase of certificates of State stock, to be deposited with the treasurer of State as collateral security for the redemption of its notes of circulation.

Sec. 58. No banking company shall, during the time it shall continue its operations as a bank, withdraw, or permit to be withdrawn, either in form of dividends, loans to stockholders for a longer period of time than six months, or in any other manner, any portion of its capital stock; and if losses shall at any time have been sustained by any banking company, equal to or exceeding its undivided profits then on hand,

no dividend shall be made; and no dividend shall ever be made by any banking company while it shall continue its banking operations to an amount greater than its nett profits then on hand, deducting therefrom its losses, bad and suspended debts; and all debts due to a banking company, on which interest is past due and unpaid for a period of six months, unless the same shall be well secured, and shall be in the process of collection, shall be considered bad or suspended debts within the meaning of this section.

Sec. 59. The directors of each banking company shall, semi-annually, on the first Mondays in May and November, declare a dividend of so much of the nett profits of the company as they shall judge expedient; and on each dividend day the cashier shall make, and verify by his oath, a full, clear, and accurate statement of the condition of the company, as it shall be on that day, after declaring the dividend; and similar statements shall also be made on the first Mondays of February and August in each year; which statement shall contain—

First. The amount of the capital stock actually paid in, and then remaining, as the capital stock of the company.

Second. The amount of the bills or notes of the company then in circulation, specifying the amount of each denomination.

Third. The greatest amount in circulation, at any time since the making of the last previous statement, as shall have been exhibited by the weekly statements of the cashiers, specifying the times when the same occurred.

Fourth. The amount of balances and debts of every kind due to the branches of the State Bank of Ohio, the amount due to other banking companies of the State, and the amount due to banks not of this State.

Fifth. The amount due to depositors.

Sixth. The total amount of debts and liabilities of every description, and the greatest amount since the making of the last previous statement, specifying the time when the same occurred.

Seventh. The total amount of dividends declared on the day of making the statement.

Eighth. The amount of gold and silver coin and bullion belonging to such company, and in possession at the time of making the statement, designating the amount of each.

Ninth. The amount subject to be drawn at sight, in gold and silver, then remaining on deposit with solvent specie-paying banks, or bankers, in the cities of New York, Philadelphia, Boston, and Baltimore.

Tenth. The amount then on hand of bills or notes issued by branches of the State Bank of Ohio, the amount issued by other banking companies of this State, and the amount issued by banks not of this State.

Eleventh. The amount of balances due from branches of the State Bank of Ohio, the amount due from other banking companies of this State, and the amount due from banks not of this State, excluding, in the latter case, deposits in the cities of New York, Philadelphia, Boston, and Baltimore, subject to sight drafts, payable in specie.

Twelfth. The amount on hand of bills, bonds, notes, and other evidences of debt, discounted or purchased by the company, specifying particularly the amount of suspended debt, the amount considered bad, the amount considered doubtful, and the amount in suit or judgment.

Thirteenth. The value of the real and personal property, held for the convenience of the company, specifying the amount of each.

Fourteenth. The amount of real estate taken in payment of debts due the company.

Fifteenth. The amount of the undivided profits of the company.

Sixteenth. The total amount of the liabilities to the company by the directors thereof, collectively, specifying the gross amount of such liabilities as principal debtors, and the gross amount as endorsers or sureties.

Seventeenth. The total amount of liabilities to the company of the stockholders thereof, collectively, specifying the gross amount of such liabilities as principal debtors, and the gross amount as endorsers or sureties; which statement shall be forthwith transmitted to the auditor of State.

Sec. 60. Each banking company organized under this act, or accepting thereof, and complying with its provisions, shall, semi-annually, on the days designated in the fifty-ninth section for declaring dividends, set off to the State six per centum on the profits, deducting therefrom the expenses and ascertained losses of the company for the six months next preceding, which sum or amount so set off shall be in lieu of all taxes to which such company, or the stockholders thereof, on account of stock owned therein would otherwise be subject; and the cashier shall, within ten days thereafter, inform the auditor of State of the amount so set off, and shall pay the same to the treasurer of State on the order of said auditor; but in computing the profits of the company, for the purposes aforesaid, the interest received on the certificates of the funded debt of this State held by the company, or deposited with, and transferred to, the treasurer of State, or to the board of control by such company, shall not be taken into the account.

Sec. 61. Every banking company deriving any of its powers and privileges from this act, may take, reserve, receive, and charge on any loan or discount made, or upon any note, or bill of exchange, or other evidence of debt, at the rate of six per centum per annum on the amount of any such note, bill of exchange, or other evidence of debt, so discounted, and no more; provided, however, that interest may be reserved or taken in advance at the time of making the loan or discount, according to the usual rules of banking, or as calculated in Rowlett's tables; and the knowingly taking, reserving, or charging on any debt or demand payable to such company, of a rate of interest greater than that allowed by this section, shall be held and adjudged a forfeiture of such debt or demand; but the purchase, discount, or sale of a bill of exchange, payable at another place than the place of such purchase, discount, or sale, at the current discount or premium, shall not be considered a taking, reserving, or receiving interest, provided no

agreement or understanding shall be made that the same shall be paid at any other place than that at which it was made payable.

Sec. 62. The total liabilities of any person, or of any company or firm, (including in the liabilities of a company or firm the *the* liabilities of the several members thereof,) to any banking company deriving any of its powers or privileges from this act, inclusive of liabilities as acceptor or acceptors of bona fide bills of exchange payable out of this State, shall at no time exceed one-half; exclusive of liabilities as acceptor or acceptors, one-fifth; and exclusive of all liabilities on such bills of exchange, one-tenth part of the amount of the notes which such company is authorized to circulate at the time of such liabilities.

Sec. 63. No banking company shall, at any time, pay out on loans or discounts, or in purchasing of drafts or bills of exchange, or in payment of depositors, nor shall it in any other mode put in circulation the notes of any bank or banking company either in or out of this State, which notes shall not at that time be receivable at par in payment of debts, and by the company so paying out or circulating such notes; nor shall it knowingly pay out or put in circulation any notes issued by any bank or banking company which, at the time of such paying out or putting in circulation, is not redeeming its notes in gold and silver, nor any notes issued by any bank out of this State of a denomination less than five dollars.

Sec. 64. All notes, bills, and other evidences of debt, excepting bills of exchange, discounted by any banking company, shall be made by the terms thereof, or by special endorsement, payable solely to such company, and no such evidence of debt shall be assignable except for collection, or for the following purposes:

First. To pay and redeem the circulating notes of such company.

Second. To pay other liabilities of the said company; and after such liabilities shall have been discharged—

Third. To divide among the shareholders on their stock.

Sec. 65. All transfers of the notes, bonds, bills of exchange, and other evidences of debt owing to any banking company, or of deposits to its credit; all *all* assignments of mortgages or other securities on real estate, or of judgments or decrees in its favor; all deposits of money, bullion, or other valuable thing for its use, or for the use of any of its stockholders or creditors; all payments of money to either, made after the commission of an act of insolvency or in contemplation thereof, with a view to prevent the application of its assets in the manner prescribed by this act, or with a view to the preference of one creditor to another, except in payment of its circulating notes, shall be held utterly null and void.

Sec. 66. If the directors of any banking company which shall have availed itself of any of the privileges granted by this act shall knowingly violate, or knowingly permit any of the officers, agents, or servants of such company to violate any of the provisions of this act, all the rights, privileges, and franchises of said company, derived from this act, shall thereby be forfeited; such violation shall, however, be deter-

mined and adjudged by a court of competent jurisdiction, agreeably to the laws of this State and the practice of such court, before the corporation shall be declared dissolved; and in case of such violation, every director who participated in, or assented to the same, shall be held liable in his personal and individual capacity for all damages which the company, its shareholders, or any other persons, body politic or corporate, shall have sustained in consequence of such violation.

Sec. 67. Every president, director, cashier, teller, clerk, or agent of any banking company, who shall embezzle, abstract, or wilfully misapply any of the moneys, funds, or credits of such company, or shall without authority from the directors issue or put in circulation any of the notes of such company, or shall without such authority issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any note, bond, draft, bill of exchange, mortgage, judgment, or decree, or shall make any false entry on any book, report, or statement of the company, with an intent in either case to injure or defraud such company, or to injure or defraud any other company, body corporate or politic, or any individual person, or to deceive any officer or agent appointed to inspect the affairs of any banking company in the State, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the penitentiary at hard labor not less than five nor more than ten years.

Sec. 68. The stockholders of the Bank of Geauga, of the Western Reserve Bank, of the Columbiana Bank of New Lisbon, of the Lafayette Bank of Cincinnati, and of the Ohio Life Insurance and Trust Company, shall, in each case, be considered as having associated and formed a company for the purpose of banking under the provisions of this act, with such amount of capital stock, by such name and at such place, with the county where such banking company is now located, as shall be determined on by a majority of its directors or trustees; and, after making, acknowledging, and filing with the county recorder a certificate setting forth the name, amount of capital, and the place of banking of such company, and transmitting to the board of commissioners a copy thereof as prescribed in the seventh section, and after said commissioners shall have examined the condition of such company, and found that, as to the amount of its capital, its gold and silver coin or their equivalent on hand, the requirements of this act have been complied with, such company shall be authorized to recommence, and during the time limited by this act carry on the business of banking, subject to the limitations, restrictions, and liabilities herein prescribed; and, on depositing with the treasurer of State (subject, in case such company shall elect to become a branch of the State Bank of Ohio, to the order of the board of control) certificates of funded debt, or money to an amount equal to the amount required of new companies formed and organized under the provisions of this act, as compared with the amount of their circulating notes, such company may immediately proceed to issue its notes of circulation to any amount within the limits in such cases prescribed by this act. But when the board of control or

the treasurer of State, as the case may be, shall be prepared to furnish notes for circulation, the notes previously issued by such company shall not be re-issued or in any way put in circulation by such company, but shall be transmitted to the treasurer of State or to the board of control, to be destroyed, as in the case of defaced or mutilated notes, and new notes received in lieu thereof; provided, however, that the capital set apart for banking purposes by the Ohio Life Insurance and Trust Company, and the capital of the Lafayette Bank of Cincinnati, may each extend to any sum not less than three hundred thousand dollars, nor exceeding one million dollars; but the circulating notes of neither of said companies shall at any time exceed six hundred and fifty thousand dollars. In determining the number, qualifications, and liabilities of the directors or trustees of the two last-named companies, they shall each be governed by their respective acts of incorporation; and the Ohio Life Insurance and Trust Company shall in all things, except as to its banking operations, be governed by its original charter.

Sec. 69. That the Bank of Wooster, at Wooster, the Bank of Massillon, at Massillon, the Bank of Norwalk, at Norwalk, the Bank of Circleville, at Circleville, the Clinton Bank of Columbus, at Columbus, the Bank of Xenia, at Xenia, and the Bank of Sandusky, at Sandusky, may, within one year from the passage of this act, and whenever two-thirds of the directors or the owners of a majority of the capital stock of any such bank shall elect to do so, become an incorporated bank under the provisions of and during the time limited by this act, and as such be entitled to use and enjoy all the privileges and be subject to all the liabilities and restrictions of the same; provided, that the banks named in this section may, as far as the liabilities of their directors incurred previous to their acceptance of the provisions of this act, and as to their qualifications, be governed by the provisions of their several original acts of incorporation until the expiration of their respective charters; provided, also, that the acceptance of the provisions of this act by the Ohio Life Insurance and Trust Company shall not be construed to take away or abridge the banking powers now enjoyed by said company, under its act of incorporation, after the franchises granted by this act shall have expired.

Sec. 70. That before any banking institution named in the next preceding section shall be entitled to the privileges granted by this act, the board of commissioners or the board of control, as the case may be, shall appoint some suitable person to examine the assets, moneys, credits, effects, and liabilities of such bank, and report the same to the commissioners or board of control; and every such bank shall be considered as having a capital equal to the amount of its existing capital, not exceeding the amount authorized by the act incorporating the same, deducting any amount of losses, bad debts, or debts not well secured, that may exist, greater in amount than the surplus profits of said bank undivided and on hand; provided, that each of the banks named in the preceding section shall be allowed to fill up its capital stock by new subscriptions or otherwise, to the amount authorized by the law creat-

ing the same; and provided, further, that the Bank of Xenia and the Bank of Sandusky shall be authorized to receive subscriptions to the capital stock of their respective institutions, to any amount not exceeding one hundred thousand dollars, in addition to the amount authorized by their respective acts of incorporation.

Sec. 71. That before any banking institution, named in the sixty-ninth section of this act, shall be entitled to enjoy the privileges in this act granted, it shall deposit with the proper board the amount of safety fund required by this act; and every such banking institution shall, whenever seven or more institutions shall have been formed for that purpose, including those designated by name in this act, that may have accepted and complied with its provisions, become, and thereafter be considered, a branch of the State Bank of Ohio; and, as such, enjoy all the rights and privileges, and be subject to all the liabilities and restrictions, provided for in the same: Provided, that any of the banks named in the sixty-ninth section of this act may, after examination and report, as provided in the next preceding section of this act, elect to become an independent bank; and upon compliance with the rules and regulations prescribed for the government of independent banks, as far as may be applicable, such banking company shall be entitled to all the privileges, and be subject to all the restrictions, of this act.

Sec. 72. That whenever any branch of the State Bank of Ohio shall desire to close the business of such branch, and withdraw the capital thereof, it may be lawful to do so, with the consent and under the direction of the board of control, but not otherwise.

Sec. 73. The commissioners appointed by the fifth section of this act shall each be entitled to receive two dollars for each day actually employed, and the like sum for each fifty miles they shall travel in the performance of the duties enjoined on them by this act; which compensation shall be paid out of any moneys in the treasury not otherwise appropriated, on the order of the auditor of State; and the auditor shall assess an equal portion of the amount so paid on each banking company that shall have availed itself *to* the privileges granted by this act; and each special agent appointed by said commissioners to examine and report the condition of any company, as provided in the tenth section, shall receive the same compensation as is allowed to a commissioner for his services, which shall be paid by the company whose condition he was appointed to examine.

Sec. 74. Whenever, by the terms of this act, it shall be required to publish a notice in a newspaper of any particular county, and there is no newspaper at such time printed in such place, a notice printed in a newspaper of general circulation in such county for the time required shall be considered as sufficient notice; and whenever, to comply with the provisions of this act, an oath is required, an affirmation shall, in all such cases, be considered a sufficient compliance with the same; and wherever the term funded debt is used in this act, as applicable to the debts of this State, it shall be construed to mean all the debts of

this State due upon certificates of debt on State bonds, and drawing not less than five per cent. per annum interest.

Sec. 75. The act, entitled "An act to regulate banking in Ohio," passed March 7, 1842, and an act, entitled "An act to amend the act entitled an act to regulate banking in Ohio," passed February 21, 1843, are hereby repealed: Provided, that the Bank of Sandusky, the Lafayette Bank of Cincinnati, the Bank of Xenia, the Bank of Wooster, and the Bank of Norwalk, shall be subject to all the provisions of their respective original charters, and all amendatory acts relating to the same respectively, not heretofore or by this act repealed, until they respectively conform to and accept the provisions of this act: Provided, further, that nothing contained in this act shall be so construed as to permit any of the banks of this State to issue notes of a less denomination than five dollars, except such banks as shall accept of and comply with the provisions of this act.

JOHN M. GALLAGHER,
Speaker of the House of Representatives,
DAVID CHAMBERS,
Speaker of the Senate.

February 24, 1845.

OFFICE OF THE SECRETARY OF STATE,
Columbus, Ohio, March 2, 1853.

I, William Trevitt, secretary of State of the State aforesaid, hereby certify, that the foregoing laws are correct copies of the original rolls remaining in this office.

In witness whereof, I hereunto set my hand, and affix
[L. S.] the great seal of said State, at Columbus, this day and year aforesaid.

WM. TREVITT,
Secretary of State.

Fees $5. Paid by Piqua Bank, per Swan & Andrews.

Supreme court of Ohio.

STATE OF OHIO, *city of Columbus.*

I, Kendall Thomas, clerk of the supreme court of Ohio, do hereby certify, that the foregoing petition, answer, pleadings, exhibits, and journal entries, &c., are truly taken and correctly copied from the originals on file, in the said case of Jacob Knoop, treasurer, vs. the Piqua Branch of the State Bank of Ohio, lately decided in said court.

Witness my hand and the seal of said court, this 4th day
[L. S.] of April, A. D. 1853.

KENDALL THOMAS,
Clerk of the supreme court of Ohio.

Fees $24.

Assignment of errors.

And now comes the said the Piqua Branch of the State Bank of Ohio, plaintiff in error, by its counsel, and says that there is error to its prejudice in the record and judgment aforesaid, in this, to wit:

1. That said supreme court of Ohio decided that the 60th section of said [act] of Feb. 24, 1845, contained no pledge or contract on behalf of the State not to change the rate of taxation therein specified.

2. That the act aforesaid, of March 21, 1851, does not impair any franchise or contract right of the plaintiff in error as one of the banks organized under said banking law of February 24, 1845, and that said act of March 21, 1851, was a valid law.

3. In overruling the defence set up by the plaintiff in error, under the said act of February 24, 1845.

4. In rendering judgment against said plaintiff in error.

Wherefore, for the foregoing and other errors in said record and proceedings manifest, said plaintiff in error prays that they be reversed, and that it be restored to all things lost thereby.

HENRY STANBERY,
Attorney for plaintiff in error.

SUPREME COURT OF THE UNITED STATES,
United States of America, ss.

The President of the United States of America, to the honorable the judges of the supreme court of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said supreme court of Ohio, before you, between Jacob Knoop, treasurer, &c. plaintiff, and the Piqua Branch of the State Bank of Ohio, defendant, a manifest error hath happened, to the great damage of the said Piqua Branch of the State Bank of Ohio, as by its complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this 20th day of April, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States of America the 77th.

[SEAL.]

Attest: WM. MINER, *Clerk*.

THE STATE OF OHIO, *ss*.

A duly certified transcript of the record and proceedings had in the within mentioned cause by the supreme court of the State of Ohio, together with all things concerning the same, are herewith returned to the Supreme Court of the United States, as within commanded.

Witness my hand, and the seal of said supreme court of the State of Ohio, this 22d day of April, A. D. 1853.

[SEAL.]

KENDALL THOMAS,
Clerk of the supreme court of the State of Ohio.

THE STATE OF OHIO, *ss*.

I, Kendall Thomas, clerk of the supreme court of the State of Ohio, do hereby certify, that a copy of the annexed writ of error issued by the Supreme Court of the United States has this day been deposited and filed in the clerk's office of said supreme court by said Piqua Branch of the State Bank of Ohio.

Witness my hand, and the seal of said supreme court of Ohio, this 22d of April, A. D. 1853.

[SEAL.]

KENDALL THOMAS,
Cl'k S. C. of Ohio.

THE UNITED STATES OF AMERICA,
Supreme Court of the United States.

To Jacob Knoop, treasurer, &c., greeting:

Whereas the Piqua Branch of the State Bank of Ohio hath obtained the allowance of our writ of error, to the supreme court of the State of Ohio directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment, in an action or petition for recovery of tax, wherein you, the said Jacob Knoop, in that action, lately recovered against the said the Piqua Branch of the State Bank of Ohio a judgment for the sum of one thousand three hundred twenty-nine dollars and ninety-six cents, and costs, as by the said record in the said supreme court of Ohio remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said the Piqua Branch of the State of Ohio we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be: you are therefore hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said supreme court thereupon.